tion is presented as to the extent to which a third party may avail himself of the privilege. The consent of the client being conclusive, such a question could properly arise only where the client is absent, dead, or where, though present and objecting, the evidence is used against a third party only. This will be answered according to the court's theory as to the foundation of the rule. Those jurisdictions which regard the privilege as a purely personal one, analogous to a witness's right to refuse to answer incriminating questions, refuse to allow a third person to raise the privilege. *Merle* v. *Moore* (1826) 2 Carr. & Pay. 275; *Dowie's Estate* (1890) 135 Pa. St. 210; *McCooe* v. *R. R.* (1899) 173 Mass. 117. On the other hand, it has frequently been considered that the rule is founded on principles of public policy, and that for the better administration of justice the confidence of the client should be protected, if necessary, by the court on its own motion. *People* v. *Atkinson* (1870) 40 Cal. 284. If a man must rely on his legal remedies for a breach of the privilege he may be deterred from consulting an attorney, or at least induced to withhold from the latter's knowledge the full and complete facts necessary to a proper understanding of the case. *Bacon* v. *Frisbie* (1880) 80 N. Y. 394. Since the confidence is betrayed, these principles are as much violated by a disclosure in the party's absence as in his presence. *Rex* v. *Withers* (1811) 2 Campbell 578; *State* v. *Barrows* (1884) 52 Conn. 323, and this result is not changed by the fact that the evidence is to be used against a third party only.

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LEGISLATIVE CONTROL OVER CORPORATIONS UNDER THE POLICE POWER AND UNDER THE RESERVED POWER TO AMEND.—A recent decision in the Federal Supreme Court, together with a dictum in the Supreme Court of New York, present the question of the extent of legislative control of corporations under the police power and under the reserved power to alter or repeal. An Act of Congress requiring the Union Pacific to permit all railroads entering Omaha to use its bridge across the Missouri River was held constitutional in language applicable either to the police power or the power to alter or repeal reserved in the charter. *Union Pacific R.R.* v. *Mason City & F. D. R.R.* (1905) 26 Sup. Ct. 19. In New York the Appellate Division of the Supreme Court in deciding an act restraining the freedom of contract, unconstitutional as applied to individual employers, suggested that it might be valid as to corporations by virtue of the power to alter or repeal. *State* v. *Marcus* (1905) N. Y. Law J. xxxiv. 81. In the former case the powers apparently were regarded as coinciding, in the latter the police power is considered the narrower.

The police power in its larger sense is the power of the legislature to reasonably regulate, in the promotion of the general welfare, the internal affairs of the State. *People* v. *Budd* (1889) 117 N. Y. 1. From the field of the health, safety, and morality, which comprises the narrower definition, the power extends to embrace affairs affect-

ing the public. *Lake Shore & M. S. R.R.* v. *Smith* (1899) 173 U. S. 684. It is naturally indefinite, necessarily flexible, developing as circumstances arise calling for its exercise. Freund, Police Power §3.

The reserved power to alter or repeal, devised to escape the effect of the *Dartmouth College Decision* (1819) 4 Wheat. 518, has been looked upon by some of the courts as equally indefinite. *Montclair* v. *N. Y. & G. L. R.R.* (1889) 45 N. J. Eq. 436, 444. There would seem to be no reason for this, for in creating corporations the legislature can give or retain as much as it pleases consistent with its powers. The extent of the power would therefore seem to be the expressed intention of the legislature. But the courts vary in their interpretation of the most unqualified reserve clause.

In repealing charters the legislature has gone farther under a reservation than under the police power. For while under the latter its authority to act in the interest of the health, safety, and morals is unlimited, *Stone* v. *Miss.* (1879) 101 U. S. 814; *Beer Co.* v. *Mass.* (1877) 97 U. S. 25, and is operative in other cases affecting the public, *Louisville & N. R. R.* v. *Kentucky* (1895) 161 U. S. 678, yet there are cases where the right to repeal is denied under the police power, *New Jersey* v. *Yard* (1877) 95 U. S. 104, but admitted under the reserved power, *Tomlinson* v. *Jessup* (1872) 15 Wall. 454. But if the view is taken that under the reserved power a franchise, exclusive of the franchise of being a corporation, is a vested right, *Monongahela Nav. Co.* v. *U. S.* (1892) 148 U. S. 312, which when taken by the State must be paid for, *People* v. *O'Brien*, supra, the police power enabling the destruction of the franchises outright, *Bridge Co.* v. *U. S.*, supra, is greater. Again, while the forfeiture of charters for misuse and repeals under the police power are under the review of the courts, *People* v. *Ref. Co.* (1890) 121 N. Y. 582; Freund, Police Power, § 63, the reserved power is exercised without judicial intervention. *Bridge Co.* v. *U. S.*, supra; *Plank Road Co.* v. *Woodhull* (1872) 25 Mich. 99, contra. However coincident these two powers may be in other respects, in the repealing of charters, the reserved power, unsupervised by the courts, is clearly the more extensive.

In comparing the two powers in the alteration of charters, the extreme view expressed in *Greenwood* v. *Freight Co.*, supra, that the alteration under an unlimited reservation clause may be made at the pleasure of the legislature without reason or necessity, can be disregarded. The courts do not ordinarily go so far. For the good of the public or the corporators, *Holyoke* v. *Lyman* (1877) 15 Wall. 500, 519, the legislature may make reasonable alterations, *Shields* v. *Ohio* (1877), 95 U. S. 319, which do not impair the object of the grant. 1 COLUMBIA LAW REVIEW 60. Here there is a coincidence with the police power if the legislature intervenes in the internal affairs of the corporation because of the public welfare, and not through paternalism. The dictum in the second principal case is based upon cases involving the public welfare. *Leep* v. *R.*

*R.* (1894) 58 Ark. 407, 435, and would indicate that the public interests are more involved in corporations than in the case of private persons. In altering charters, excluding the extreme view, the two powers would seem to be practically coincident. In this respect, while logically the legislature under an unlimited reservation would retain unlimited control, yet in reality the courts have so far restricted the exercise of this power that the legislature today practically exercises as much control under the police power as under the reserved power to alter and amend.

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CONVEYANCE OF HOMESTEAD LANDS IN PURSUANCE OF ILLEGAL CONTRACTS.—It has been the policy of the United States government in disposing of public lands to provide in so far as possible for a beneficial distribution. Accordingly, it has endeavored to prevent the accumulation of large tracts in the hands of speculative holders, as detrimental to the immediate development of the land and the best interests of the people. Congress, having absolute right to dispose of public lands, U. S. Constitution, Art. IV, Sec. 3, has provided three general methods of distribution: that by public sale, Rev. Stat. U. S. Sec. 2353, by sale after pre-emption, Rev. Stat. U. S. Secs. 2257–2288, and by homestead entry, Rev. Stat. U. S. Secs. 2289–2302. Transfers whether by sale or by grant, under the general laws, have been restricted to small holdings and, except under public sale which has been practically abolished, Act March 3, 1891, have been conditioned upon occupation and improvement. Under the homestead laws the claimant is, upon original application, required to swear "that his entry is made for the purpose of actual settlement and cultivation and not either directly or indirectly for the use or benefit of any other person," Rev. Stat. U. S. Sec. 2290, and again, upon final proof for patent "that no part of the land has been alienated," Rev. Stat. U. S. Sec. 2291. The pre-emption laws, now applicable only to claims filed before Mar. 3, 1891, contain similar provisions, Rev. Stat. U. S. Sec. 2262. Under these statutes, it is held that conveyances or agreements to convey, if made before final proof, are illegal and void as against public policy, *Anderson* v. *Carkins* (1889) 135 U. S. 483, though the contrary is commonly held by the Land Department, *Larson* v. *Weisbecker* (1882) 1 Dec. Dep. Int. 422; *Haling* v. *Eddy* (1889) 9 Dec. Dep. Int. 337, and the State courts, *Norris* v. *Heald* (1892) 12 Mont. 282, as to mortgages, which do not indicate settlement for the benefit of another and are alienations in form only. *Fuller* v. *Hunt* (1878) 48 Ia. 163, 166. After final entry or issue of certificate, alienations or contracts to alienate, even though made in pursuance of the old agreements, will be upheld at law. *Myers* v. *Croft* (1871) 13 Wall. 291; *McMillen* v. *Gerstle* (1893) 19 Colo. 98; *Larison* v. *Wilbur* (1890) 1 N. D. 284. The further step of enforcing them in equity has been taken in a recent case in the Supreme Court of the United States which set aside a deed, prior in record, in favor of a deed,